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Ex Parte Submission

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

>   Re: Application by SWBT for Authorization To Provide
>   In-Region, InterLATA Services in Texas, CC Docket No. 00-4

Dear Ms. Salas:

Our client, AT&T, wishes to respond to several assertions made for the first time by Southwestern Bell Telephone Company ("SWBT") in its reply comments and ex parte submissions filed subsequent to its reply comments that concern SWBT's provisioning of UNE loop hot cuts. These new assertions touch on each of the three performance benchmarks established by the Commission in Bell Atlantic[1] as the "minimally acceptable" level of performance necessary to demonstrate checklist compliance.[2]

A.   Service Outage Rates

In its reply, SWBT contends that the rate of service outages on its FDT and CHC hot cut processes "are approximately the same as in the successful New York application, and certainly

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[1] In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-285 (rel. Dec. 22, 1999)(hereafter "Bell Atlantic") ¶ 309.

[2] SWBT's new assertions should plainly not be accepted or considered under the Commission's existing rules and procedures. Nevertheless, if SWBT's new assertions are included in the record, the Commission should consider this response as well.

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allow CLECs to compete effectively." Dysart Reply Aff. ¶ 7.[3] That assertion is false.

First, because service outages caused by SWBT's defective loop cuts are not captured by SWBT's performance measures, SWBT presents no performance data on the number of CLECs' FDT and CHC orders which suffered service outages due to SWBT's defective loop cuts. UNE-L Reply Decl. ¶¶ 12-29.[4] Notably, SWBT attempts to hide this critical omission by intentionally misstating AT&T's position, claiming -- based on a phrase extracted from a sentence in Ms. DeYoung's Declaration -- that AT&T "concedes" that SWBT-caused service outages "**would be revealed** in SWBT's remaining hot cut measures." Dysart Reply Aff. ¶ 51 & n.36 (emphasis original). In fact, the complete sentence in Ms. DeYoung's Declaration plainly states that SWBT's performance measures "do not capture such poor performance." UNE-L Decl. ¶ 248.[5]

SWBT's discussion of service outages caused by its premature loop cuts is equally misleading. Although acknowledging that throughout 1999 it failed to report (under PM 114) outages on FDT hot cuts caused by premature loop cuts, SWBT claims "the issue is resolved" because it started reporting such outages beginning with January 2000 data. SWBT Reply Brief at 42. The issue, however, is far from "resolved" because SWBT's implementation of its new FDT measure is no substitute for proof that, throughout 1999, its premature FDT loop cuts have not caused an unacceptable level of service outages.

Moreover, SWBT completely ignores service outages on FDT hot cuts caused by SWBT's late provisioning. As AT&T previously showed (and as SWBT has conceded in the PPIG task force's analysis of AT&T's FDT orders), if a FDT hot cut is not completed within 30 minutes from the scheduled frame due time, the customer experiences an unexpected service outage. UNE-L Reply Decl. ¶¶ 29 n.23, 39-43. SWBT's December data, although inaccurate (as discussed below), nevertheless shows that SWBT failed to complete 9.8% of all CLECs' FDT loop cutovers within 30 minutes, resulting in prolonged service outages. Id. ¶¶ 37-38.

SWBT's January FDT performance data shows equally poor provisioning. SWBT reported under PM 114.1 that 5.2% of all CLECs' FDT loops experienced outages because the loop cutovers were not completed within 2 hours[6] -- which means that an even greater number of CLECs' customers likely suffered outages due to SWBT's failure to complete the loop cutover within 30 minutes.[7] Moreover, SWBT also reported (under PM 114) that 1% of all CLECs' FDT loop cuts

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[3] Reply Affidavit of William R. Dysart, submitted in further support of SWBT's Section 271 Application ("Dysart Reply Aff.").

[4] Reply Declaration of Sarah DeYoung on behalf of AT&T Corporation, Exhibit P to the Reply Comments of AT&T Corp. in Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas ("UNE-L Reply Decl.").

[5] Declaration of Sarah DeYoung, Exhibit D to the Comments of AT&T Corp. in Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas ("UNE-L Decl.").

[6] SWBT January Aggregated Performance Data, PM 114.1 [Feb. 25, 2000 letter from Austin C. Schlick to the Commission enclosing SWBT's January 2000 performance data presented on an aggregated and disaggregated basis ("SWBT January 2000 Performance Data Ex Parte Submission")].

[7] As AT&T previously showed, SWBT's PM 114.1 improperly employs a 2 hour -- rather than a 30 minute -- cutover interval and thus understates the extent of SWBT's poor hot cut performance. UNE-L Reply Decl. ¶¶ 58-61.

experienced outages due to SWBT's premature loop cuts.[8] Thus, despite the limited scope of SWBT's performance measures -- including their failure to report outages due to defective loop cuts and outages due to loop cutovers not completed within 30 minutes -- SWBT's January data nevertheless shows a minimum 6.2% outage rate, which far exceeds the Commission's benchmark.

As for CHC hot cuts, SWBT relies on its reported PM 114 data to claim an acceptable level of service outages. SWBT Reply Brief at 40. That reliance is misplaced because, as AT&T previously showed, SWBT's PM 114 data for August through December is completely untrustworthy. UNE-L Decl. ¶¶ 209-42, UNE-L Reply Decl. ¶¶ 62-74. SWBT's only response to AT&T's evidence is to assert that AT&T has distorted Mr. Dysart's admission that, throughout the August through October period, SWBT recorded the start and stop times for hot cuts on a "random basis." Dysart Reply Aff. ¶ 53.

AT&T, however, did not distort Mr. Dysart's testimony, but simply quoted his admissions. Mr. Dysart's attempt to now change his testimony -- and claim (without proof) that only the stop times, but not the start times, for hot cuts were randomly recorded -- is simply not credible. Moreover, as AT&T previously showed, Mr. Dysart's prior admissions are consistent with the findings of the AT&T/SWBT joint reconciliation project which determined not only that SWBT's reported data for AT&T was materially incorrect but that, throughout August to November, SWBT's manual data collection processes for its hot cut performance measures were fundamentally flawed. UNE-L Decl. ¶¶ 209-34. Indeed, the fact that, supposedly in December, SWBT began implementing extensive changes to its data collection processes is proof of the material defects found by the joint reconciliation project.[9] Id. ¶¶ 238-39.

Furthermore, SWBT's claim of acceptable performance under PM 114 is belied by its January data, which shows that SWBT's premature loop cuts resulted in 4.1% of all CLECs' CHC loop cuts experiencing service outages -- a rate that far exceeds the TPUC's 2% benchmark.[10]

In the face of its own failure to provide comprehensive outage data, SWBT resorts to challenging AT&T's reconciled evidence of extensive SWBT-caused service outages on AT&T's orders. This attack is unfounded.

With respect to AT&T's FDT orders, SWBT tries to dismiss the PPIG task force's findings -- which reported outage rates of 7.7% and 33.3% on AT&T's November and December orders, respectively -- on the grounds that the order volumes were statistically insignificant. Conway Reply Aff. ¶ 14.[11] But this alleged deficiency is of SWBT's own making: it was SWBT that failed to

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[8] SWBT January Aggregated Performance Data, PM 114 [SWBT January 2000 Performance Data Ex Parte Submission].

[9] As discussed below, those asserted process improvements have not proven effective since SWBT admits in its reply papers that its December performance data under PMs 114 and 115 is materially inaccurate and is thus not reliable.

[10] In addition, SWBT's PM 114 data for CHC and FDT loop cuts shows an aggregate 2.6% outage rate, which again exceeds the TPUC's benchmark. See SWBT January Aggregated Performance Data, PM 114 [SWBT January 2000 Performance Data Ex Parte Submission].

[11] Reply Affidavit of Candy R. Conway, submitted in further support of SWBT's Section 271 Application ("Conway Reply Aff.").

measure and report outage rates on all CLECs' FDT hot cuts.

SWBT also asserts that its has addressed the "root cause" of the outages affecting AT&T's FDT orders by retraining its Houston-based central office technicians. Id. SWBT's claim, however, rings hollow given that SWBT previously represented that it had thoroughly re-trained its Houston technicians after AT&T's August FDT orders (which experienced a 53% outage rate) revealed substantial problems in SWBT's Houston offices. UNE-L Decl. ¶¶ 58-64. Moreover, the PPIG task force's analysis showed that outages on AT&T's December orders were not limited to those provisioned in SWBT's Houston offices, but also occurred in SWBT's Dallas central offices.[12] Id. ¶ 69-70 & Attach. 7.

SWBT's challenge to the outage rate on AT&T's CHC hot cut orders found by the PPIG task force -- which reported an average 8.2% outage rate for August to October -- is equally misguided.[13] SWBT's primary argument is that the PPIG's task force's outage rate is overstated, because an appropriate analysis would focus on the number of loops -- not orders -- that suffered a service outage and then apply the Commission's "fewer than 5%" benchmark to that loop outage rate. Conway Reply Aff. ¶ 13.

Even under SWBT's approach, however, the PPIG task force's findings reveal unacceptable performance, reporting an average 5.9% loop outage rate for August through October.[14] Moreover, SWBT's approach is analytically flawed. For an outage rate to reflect whether SWBT's performance provides CLECs a meaningful opportunity to complete, it must appropriately assess the impact of outages on CLECs' customers. In Bell Atlantic, the Commission determined that an outage rate must be based on the number of orders -- not loops -- that suffer outages due to provisioning errors. Bell Atlantic ¶¶ 302, 309.

The Commission's decision makes eminent good sense. Business customers evaluate a CLEC's performance based on whether their entire order -- not simply a portion of requested services -- was successfully installed as promised. These customers are very wary of any problems that they perceive to be inflicted by new providers. Moreover, in many instances, a partially uncompleted order has a disproportionate impact on a customer's business. To illustrate the problem, consider a small business customer who orders 3 loops -- one for voice, one for faxes and one for credit card processing. If one of those loops suffers an unexpected service outage upon conversion, the customer will not be 2/3 satisfied by the CLEC's performance. To the contrary, because the single loop outage will severely disrupt the customer's business, the customer will likely

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[12] In addition, SWBT tries to blame AT&T for the high December outages because AT&T supposedly failed to alert SWBT that it was placing FDT orders. Conway Reply Aff. ¶ 14. Not only does that argument illustrate the ineffectiveness of SWBT's "FDT Unit" but SWBT's claim is belied by the fact that AT&T's November FDT orders should have alerted SWBT to AT&T's December FDT orders.

[13] The monthly order outage rate was 5.1%, 11.4% and 9.3% for August, September and October, respectively. UNE-L Decl. ¶ 87. Moreover, as AT&T previously explained, the PPIG task force's reported results likely understate the extent of SWBT's poor provisioning for a variety of reasons. Id. ¶¶ 88-89.

[14] The monthly loop outage rate was 4.4%, 7.1% and 6.6% for August, September and October, respectively. See Attachment 1 to the Joint Affidavit of Mark Van De Water and Robert J. Royer, sworn to Dec. 16, 1999 [UNE-L Decl., Attach. 8].

consider the entire order unsatisfactory and view the CLEC as an inefficient and unreliable service provider -- thereby undermining the CLEC's relationship with its customer and tarnishing its reputation.

Moreover, even if loop counts were used to measure service outages, application of the Commission's "fewer than 5%" outage benchmark would not be appropriate. The Commission set its benchmark based on the "minimally acceptable" level of orders which it determined could suffer an outage and yet still afford CLECs a meaningful opportunity to compete. Bell Atlantic ¶ 302. As SWBT acknowledges (Conway Reply Aff. ¶ 13), because a single order typically requests more than one loop and because only a sub-set of loops on any order may suffer an outage, use of a 5% loop outage rate would sanction SWBT-caused outages on substantially more of CLECs' orders than the Commission has deemed acceptable under Section 271.[15] Accordingly, if loop counts were employed as the basis for measuring outages, the Commission's "fewer than 5%" outage rate would need to be substantially reduced to approximate the same degree of competitive impact as its order outage rate permits. In SWBT's case, an appropriate loop outage rate would be "fewer than 1.28%" -- a rate that SWBT has never come close to meeting.[16]

Apart from its improper loop outage rate argument, SWBT also contends that its CHC performance has substantially improved -- a claim SWBT says is proven by the PPIG task force's report on AT&T's November and December CHC orders. Conway Reply Aff. ¶ 12. SWBT's claim, however, is unfounded because the PPIG task force has not, in fact, completed reconciling the data on AT&T's November and December CHC hot cuts. Indeed, as SWBT well knows, the PPIG task force has been unable to determine the total number of CHC hot cut orders and loops completed in November and December -- and thus has been unable to report the percentage of orders or loops which experienced a SWBT-caused service outage.[17] UNE-L Decl. ¶ 92; UNE-L Reply Decl. ¶¶ 25

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[15] To illustrate the issue, assume a CLEC submits 100 orders with an average of 4 loops per order. An order outage rate of 5% would allow 5 customers' orders to suffer an outage. In contrast, a 5% loop outage rate would allow 20 loops to suffer an outage (i.e., 5% of 400 loops). If only one loop per order suffered an outage (as SWBT suggests occurs), then the 5% loop outage rate would permit 20 customers' orders to suffer outages -- a rate far exceeding the "minimally acceptable" level set by the Commission.

[16] The loop outage rate benchmark is calculated by dividing the Commission's 5% order outage rate by the average loop/order ratio of all CLECs' hot cut orders. Although evidence of such an average loop/order ratio is limited, SWBT's sample cutover performance data for August through October provides a useful statistic. SWBT's sample data showed an average loop/order ratio of 3.91. See Dysart Aff. ¶ 653. Dividing the Commission's 5% order outage rate by the 3.91 loop/order ratio yields a 1.28% loop outage rate.

[17] Contrary to SWBT's claim, the charts appended as Attachment A to Ms. Conway's Reply Affidavit do not reflect reconciled November results for AT&T's CHC orders (although they do reflect the agreed-upon results for AT&T's November and December FDT orders, which the PPIG task force was able to reconcile due to the smaller FDT order volume). The charts, which Ms. DeYoung and her staff presented at an Officer meeting held with SWBT on February 3, 2000, were prepared for the purpose of showing, on a preliminary basis, the current trend in SWBT's hot cut performance. Although not disclosed in SWBT's reply papers, Ms. DeYoung told SWBT at that meeting that AT&T did not agree with the CHC order or loop volumes SWBT reported for November and had employed SWBT's figures in the chart for illustrative purposes only. Indeed, consistent with her statements to SWBT, Ms. DeYoung had, only days before the Officer meeting, represented in her UNE-L Declaration (at ¶ 92) that "the PPIG task force has thus far been unable to complete its reconciliation of the November CHC orders", a point

n.21, 71.

The reason for the lack of agreement on volume figures, as AT&T has previously explained, is that SWBT's data is both internally inconsistent and conflicts with AT&T's internal data. UNE-L Reply Decl. ¶¶ 68-72. Ms. Conway illustrates that very point in her Reply Affidavit. Thus, while Ms. Conway reports (at ¶ 12) that SWBT completed *** CHC loop cuts for AT&T in December, SWBT's reported December performance data for AT&T under PMs 114 and 115 shows that SWBT completed *** CHC loop cuts.[18] Moreover, the loop outage rate -- and the order outage rate that Ms. Conway fails to mention -- may be even higher than those based on either one of SWBT's volume figures because SWBT's internally conflicting volume figures also conflict with AT&T's internal data. For that reason, AT&T is not prepared to adopt (and the Commission should not accept) either a volume figure -- or a loop or order outage rate -- until the PPIG task force completes its detailed reconciliation process. Accordingly, SWBT's claim of improved CHC provisioning should be rejected.

B.   Cutover Intervals

SWBT contends on reply that, based on its reported performance data supposedly collected consistent with its newly adopted PM 114.1, its "on-time" loop cutover performance is "significantly better than Bell Atlantic reported in New York." Dysart Reply Aff. ¶ 7. The evidence in the record, however, directly contradicts SWBT's claim.

First, although SWBT continues to tout its reported CHC cutover performance for August through October (e.g., Conway Reply Aff. ¶ 4), Mr. Dysart's admission in his Reply Affidavit confirms that the statistics SWBT reported on its sampled cutover data -- which, in any event, never showed satisfactory performance[19] -- do not reflect SWBT's cutover performance on all CHC hot cuts and thus cannot support its Application. Contrary to statements made in his initial Affidavit,[20] Mr. Dysart now admits that the data on which he based his cutover performance statistics "was not drawn from a random sample." Dysart Reply Aff. ¶ 45. Mr. Dysart's belated confession undermines SWBT's claims concerning its performance data, since it is beyond dispute that statistics based on a

she later repeated in her Reply Declaration (at ¶ 71) with respect to both AT&T's November and December CHC orders.

[18] Compare Conway Reply Aff. ¶ 12 with SWBT December performance data for AT&T, PMs 114 and 115 [UNE-L Decl., Attach 35].

[19] As AT&T previously showed, SWBT's own data for CHC cutovers completed within 1 hour demonstrates that SWBT failed to meet the Commission's 90% "on-time" cutover benchmark in both August and October. UNE-L Decl. ¶¶ 140-41. Moreover, SWBT's 85.6% average 1 hour cutover rate for August to October also falls below the Commission's standards. See Affidavit of William R. Dysart ("Dysart Aff.") ¶ 655 (setting forth total number of CHC orders sampled and orders completed within 1 hour) [Appendix A-5 to SWBT's Section 271 Application, at Tab 1].

[20] In his initial Affidavit, Mr. Dysart explained that, because SWBT's technicians recorded the start and stop times on CHC hot cuts on a "random basis" during August through October, most CHC hot cuts were missing the data needed to calculate a cutover interval and thus he was forced to rely on only a sample of all CHC hot cuts to develop SWBT's cutover performance statistics. Nevertheless, Mr. Dysart asserted that because the cutover data was recorded on a random basis, "the results would therefore be random and would be representative of all coordinated conversions." Dysart Aff. ¶ 653.

non-random sample cannot be extrapolated to a larger data population. Accordingly, SWBT's performance statistics are relevant, at best, only to the sample of CHC hot cuts Mr. Dysart examined -- which consisted of 5% to 15% of the total CHC loop cuts SWBT supposedly performed in the August to October period.[21] The fact that SWBT's performance statistics are inapplicable to 85% to 95% of the CHC hot cuts it performed during the August through October period renders SWBT's claims of satisfactory performance frivolous.

Unable to rely on its cutover performance data for August through October, SWBT is left with only its December data. Contrary to SWBT's claims, however, the December data also fails to support its Application because, under the Commission's consistent rulings, one month of data is insufficient to show checklist compliance. In addition, SWBT's recent admission in its reply that its reported December volume figure for PM 114 and 115 is wrong (as discussed above) -- coupled with the other evidence AT&T has previously presented (see UNE-L Reply Decl. ¶¶ 62-74) -- provides ample reason not to trust SWBT's December data.

Moreover, even assuming that SWBT's December data is accurate, its reported cutover statistics fail to satisfy the Commission's "minimally acceptable" level of performance. For example, although Mr. Dysart claims that SWBT's December aggregate data for FDT and CHC hot cuts "reflect 90.5% completions within 1 hour" (Dysart Reply Aff. ¶ 48), his calculation improperly relies on December data that excludes "CLEC Caused Misses."[22] Excluding CLEC caused misses is inappropriate because (1) the business rules do not authorize any such exclusions, and (2) the cutover interval does not start until the CLEC authorizes the cut and ends when the SWBT frame technician notifies SWBT's Local Operations Center that he has completed his work; thus CLECs could not be responsible for any "misses" under this measure. When SWBT's December data including "CLEC-caused misses" is properly employed, SWBT's data shows a 88.7% aggregate loop completion rate for FDT and CHC hot cuts -- which fails to meet the Commission's 90% benchmark.

SWBT also asserts that it 2 hour loop cutover performance in December satisfies the Commission's 90% performance benchmark (see Conway Reply Aff. ¶¶ 4-5, 8), but that argument is flawed for several reasons. First, SWBT's December data is presented in terms of completed loop cuts rather than completed orders. In Bell Atlantic, however, the Commission based its cutover benchmark on completed orders and determined that a 90% "on-time" order cutover rate was the "minimally acceptable" level of orders -- given the types of orders included within Bell Atlantic's cutover measure -- which must be timely provisioned to provide CLECs a meaningful opportunity to compete. Bell Atlantic ¶¶ 292, 298, 309. For the same reasons as discussed above with respect to service outages, measuring performance based on completed orders -- rather than completed loops as SWBT has done -- is a more appropriate basis to assess the competitive impact of untimely provisioning. Furthermore, because on any individual order provisioned late it is likely that some loops may be timely completed while others are late, statistics based on a percentage of timely completed loops understate the number of customers adversely affected by untimely loop cutovers.[23]

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[21] The number of CHC loops Mr. Dysart claims he examined and the number of CHC loop cuts SWBT claims it performed during August to October are set forth in the UNE-L Reply Decl. ¶ 46 & n.31.

[22] See UNE-L Reply Decl. ¶ 37 n.26.

[23] For example, assume 10 orders with 2 loops per order are provisioned and that each order cutover results in one loop being completed timely and the other one late. A loop cutover rate would show 50% of the loops being timely provisioned whereas an order cutover rate would show none of the

Accordingly, SWBT's attempt to apply the Commission's 90% "on-time" order cutover benchmark to SWBT's loop cutover data is wholly inappropriate.

SWBT's argument is further flawed by its reliance on a 2 hour cutover interval. Significantly, the TPUC has never approved SWBT's use of a 2 hour interval for FDT hot cuts and, for all the reasons AT&T has previously discussed, such a 2 hour interval is unsupportable and a 30 minute cutover interval should apply. See UNE-L Reply Decl. ¶¶ 58-61.

As for CHC hot cuts, AT&T has previously explained why a 1 hour -- and not a 2 hour -- cutover interval is appropriate on both technical and competitive grounds. See UNE-L Decl. ¶¶ 145-54. Although SWBT initially claimed that the DOJ supported its 2 hour interval, SWBT has now abandoned that argument in the face of the DOJ's repudiation of SWBT's position. See DOJ Eval. at 32 n.84. Instead, SWBT advances a new rationale on reply, claiming that, unlike Bell Atlantic (which required a 1 hour interval for order cutovers involving 9 or less loops), SWBT's PM 114.1 applies to conversions of 1 to 24 loops and thus justifies a 2 hour interval. See SWBT Reply Brief at 39. SWBT latest argument, however, is equally meritless since it is plain that SWBT's PM 114.1 fails to provide a "meaningful" measurement of its cutover performance (see DOJ Eval. at 5) and serves to mask discriminatory performance.

As SWBT's argument implicitly concedes, the amount of time required to complete the cutover of an order varies with the number of loops requested by the customer. In New York, Bell Atlantic properly disaggregated its cutover measure by order types involving different loop sizes, thereby allowing an appropriate evaluation to be made of Bell Atlantic's provisioning performance for different market segments -- e.g., small business and residential customers ordering 9 or less loops and larger business customers ordering 10 or more loops.[24] In contrast, SWBT has bundled various order types (employed by different market segments) into one undifferentiated measure, with the result that SWBT's performance on smaller orders is masked by a cutover interval applicable to larger size orders. SWBT's approach is particularly inappropriate because the available evidence shows that most CLECs' hot cut orders involve less than 9 loops.[25] Accordingly, by employing a 2 hour interval designed for 24 loop orders to CLECs' substantially smaller-sized loop orders, SWBT's PM 114.1 provides SWBT with much more time than is needed to complete most of the hot cut orders that CLECs request, and its cutover statistics will not reflect that SWBT is not providing CLECs with a meaningful opportunity to compete with respect to those orders.

Moreover, while SWBT claims that its 2 hour CHC cutover interval received the TPUC's approval, the Commission should not defer to the TPUC's decision because (a) CLECs were

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orders being timely provisioned.

[24] Bell Atlantic's PR-4 metric disaggregated its cutover interval into 5 categories: 1-9 loops - 1 hour; 10-49 loops - 2 hours; 50-99 loops - 3 hours; 100-199 loops - 4 hours; and 200 plus loops - 8 hours.

[25] For example, AT&T's average loop/order ratio is approximately *** (UNE-L Decl. ¶ 9 n.5) and, as discussed above, SWBT's August to October sample of CHC hot cuts revealed an average 3.91 loop/order ratio. These small loop/order ratios undermine SWBT's claim that its 2 hour interval allows SWBT only 5 minutes to complete each loop cut (Dysart Reply Aff. ¶ 48) and instead show that SWBT's measure allows it approximately 30 minutes to complete each loop cut -- despite SWBT's claim that a properly executed loop cut requires only 2 seconds. Affidavit of Candy R. Conway ("Conway Aff.") ¶ 87 [Appendix A-4, Tab 3 to SWBT's Section 271 Application].

excluded from participating in the adoption of PM 114.1 (UNE-L Reply Decl. ¶ 13 & n.4); (b) the TPUC concedes that it did not have the benefit of the Commission's Bell Atlantic analysis when it approved PM 114.1 (TPUC Reply Eval. at 9 & n.10); and (c) the TPUC adopted PM 114.1 only on an "interim" basis and "intends to explore a more disaggregated metric for this measure at the six-month review process in April." Id. at 9 n.10. In light of the above, it would be precipitous for the Commission to follow the TPUC's decision and evaluate SWBT's performance based on a 2 hour cutover interval since the TPUC may soon find that SWBT's cutover performance must be evaluated on a more disaggregated basis in order to properly assess whether SWBT is providing CLECs a meaningful opportunity to compete.

Nevertheless, if SWBT's cutover performance is to be judged based on PM 114.1's 2 hour interval, then the TPUC's benchmark for PM 114.1 -- which requires that 100% of SWBT's loop cutovers be completed within 2 hours -- should apply.[26] Based on that standard, it is plain that SWBT's cutover performance is woefully inadequate. SWBT's December data (including "CLEC-caused misses") shows that SWBT completed only 92.8% and 95.1% of CHC and FDT loop cuts, respectively, within 2 hours and thus its performance fell far short of the TPUC's 100% benchmark.[27] Moreover, SWBT's January data shows that SWBT again failed to meet the TPUC's benchmark; indeed its performance worsened, with only 92.3% and 94.8% of CHC and FDT loop cuts, respectively, being completed within 2 hours.[28]

In sum, the limited data SWBT presents in support of its Application shows that SWBT's cutover performance fails to meet the standards set by both the Commission and the TPUC and confirms SWBT's failure to provide CLECs a meaningful opportunity to compete.

C.   Trouble Report Rates

SWBT claims in its reply that its hot cut provisioning is "reliable" and satisfies the Commission's "fewer than 2%" trouble report rate benchmark. SWBT Reply Brief at 40. The evidence before the Commission directly contradicts SWBT's claim.

According to SWBT, its PM 59 (trouble reports on new and converted UNE loops within 30 days of installation) includes trouble reports on new loops and loops converted both with and without the FDT and CHC processes, and fails to separately dissaggregate trouble reports on FDT and CHC hot cuts. Id. Accordingly, the only Texas-wide data SWBT has presented on its hot cut trouble report rate is its December performance data. Not only is that one month of data insufficient, as an evidentiary matter, to support SWBT's Application, but the data is unreliable, as discussed above and in AT&T's prior submissions. UNE-L Reply Decl. ¶¶ 62-74.

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[26] See Business Rules, PM 114.1, included in SWBT's T2A amendments, Attach. 17, filed Jan. 7, 2000 in TPUC Project No. 16251 [Appendix C to SWBT's Application at Tab 2034].

[27] See SWBT's January 21, 2000 hot cut ex parte submission. SWBT's December data excluding "CLEC-caused misses" also reflects that SWBT failed to meet the TPUC's 100% benchmark for both FDT and CHC orders. See Conway Reply Aff. ¶ 3 n.3.

[28] SWBT January Aggregated Performance Data, PM 114.1 [SWBT January 2000 Performance Data Ex Parte Submission]. AT&T does not know whether SWBT's January data improperly excludes "CLEC-caused misses" from its results; however, if such exclusions were made, then SWBT's actual January performance would be even worse than SWBT has reported.

Even assuming, however, that SWBT's December data is accurate, it would still not demonstrate satisfactory performance. According to SWBT (SWBT Reply Brief at 40), its December data shows a 2.9% and 2.2% trouble report rate for FDT and CHC hot cuts, respectively, and an average trouble report rate for all hot cuts of 2.6% -- statistics which all fail to meet the Commission's "fewer than 2%" benchmark. SWBT's claim that its performance likely satisfies the Commission's benchmark because it employed an I-10 trouble report rate whereas the Commission relied on an I-7 trouble report rate is not only speculative, but is also not credible, since SWBT specially collected and reported its statistics solely to address the Commission's standards and thus SWBT would likely have reported its I-7 rate if those figures had demonstrated better performance than did its non-compliant I-10 rate.[29] Moreover, it is apparent that SWBT's 2.6% average trouble report rate far exceeds both Bell Atlantic's 0.7% average trouble report for the 3-month period examined by the Commission as well as the highest trouble report rate of 1.26% which Bell Atlantic reported during that period. Bell Atlantic ¶ 300 n.956. Furthermore, because SWBT has failed to disclose the extent of service outages caused by its provisioning errors, SWBT's attempt to claim satisfactory loop provisioning based solely on its unacceptable December trouble report rate is meritless.

In the absence of its own compliant trouble report data, SWBT seeks to attack AT&T's evidence of SWBT's inadequate provisioning as shown by SWBT's excessive trouble report rate for AT&T's UNE loop orders, which consist primarily of FDT and CHC hot cuts. Conway Reply Aff. ¶ 15. SWBT's attempt to down-play the significance of AT&T's trouble report rate data, however, is unavailing. First, SWBT tries to discount AT&T's high trouble report rate by claiming that it results from AT&T's "inappropriate reliance on filing trouble reports after completion, rather than identifying problems during the agreed-upon test and acceptance period." Id. Given the substantial number of service outages caused by SWBT's defective loop cuts that the PPIG task force has reported -- outages which were identified after SWBT completed the loop cutover but before AT&T accepted the cutover -- SWBT's claim is patently frivolous.[30]

Second, SWBT claims that AT&T's trouble report rate for September though December is artificially inflated because it includes a high number of reports which SWBT has coded as "NTF" (i.e., "no trouble found"). Id. ¶ 15 n.5. Because AT&T has not yet reconciled with SWBT its designation of trouble reports into various classifications, AT&T is not prepared to accept Ms. Conway's NTF analysis.[31] Nevertheless, even assuming Ms. Conway's figures are correct, the

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[29] SWBT also contends -- in a disclosure first made on reply in violation of the Commission's procedural rules -- that it satisfies the Commission's benchmark because its "installation report rate" for "out-of-service conditions" is "1.4%" for FDT and CHC orders. Dysart Reply Aff. ¶ 49. SWBT's claim is unpersuasive because SWBT not only fails to provide any data to support its bare statistic, but its reported measurement is undefined and fails to reveal the types of trouble reports SWBT included (and excluded) in compiling its data

[30] Although AT&T has not yet installed (as SWBT correctly notes) mechanized test capabilities to allow it to identify loop troubles, it is presently proceeding on an expedited schedule to deploy such test capabilities. Ironically, once that test equipment is installed, AT&T may be able to identify even more outages due to defective loop cuts than the PPIG task force has already confirmed -- outages that will not be captured by any existing performance measure.

[31] For example, for December alone, AT&T has identified several trouble reports coded by SWBT as NTF that AT&T's internal trouble logs show as verified loop troubles for which SWBT was

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exclusion of NTF coded trouble reports would still result, as shown below, in an unacceptably high 30-day and 7-day trouble report rate for AT&T:[32]

| | 30 day Trouble Report Rate | | 7 day Trouble Report Rate | |
	(NTF Included)	(NTF Excluded)	(NTF Included)	(NTF Excluded)
September	4.1%	3.3%	data not available	
October	9.5%	7.3%	7%	5.0%
November	3.5%	2.2%	3%	1.7%
December	9.9%	5.6%	4%	2.8%

Not only do these figures show, on a monthly basis, unacceptable provisioning by SWBT, but the trend in SWBT's performance also confirms SWBT's failure to satisfy the Commission's benchmark, since SWBT's data (after excluding NTF coded trouble reports) reveals a 3.6% average 30-day trouble report rate for the 4 months ending in December and a 2.5% average 7-day trouble report rate for the 3 months ending in December.

In sum, as the evidence presented above shows, not only does SWBT's Texas-wide trouble report data reveal unacceptable hot cut provisioning for the one month SWBT has chosen to disclose, but SWBT's trouble report data for AT&T's hot cuts shows equally poor provisioning across a range of several months. Evaluated either collectively or independently, SWBT's own data demonstrates that SWBT has failed to satisfy the Commission's "minimally acceptable" level of performance.
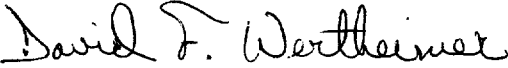
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responsible.

[32] AT&T reduced its 30-day trouble report rate (presented in UNE-L Reply Decl. ¶ 54) by the number of NTF coded trouble reports Ms. Conway identified in her Reply Affidavit (at ¶ 15 n.5). AT&T reduced its 7-day trouble report rate (presented in UNE-L Reply Decl. ¶ 54) based on the trouble report codes included in the PM 65 raw data SWBT previously provided to AT&T. Like Ms. Conway, AT&T's NTF exclusions include not only trouble reports coded NTF, but those coded "CC" (i.e., came clear) and "TOK" (i.e., test ok). As AT&T has previously explained, it employed the PM 65 raw data because those reports included certain informational fields necessary to perform its analysis that were absent from the PM 59 raw data SWBT has also provided. See UNE-L Reply Decl. ¶ 54. n.36. The PM 65 raw data for October and November is appended as Attachments 20 and 21 to the UNE-L Decl. The PM 65 raw data for December is appended as Attachment 3 to the UNE-L Reply Decl. and that same December data, with the addition of SWBT's trouble report code field, is attached hereto as Attachment A.

Conclusion

As shown by the discussion above and further demonstrated by the evidence submitted by AT&T in its initial and reply comments, SWBT has failed to prove that it is providing nondiscriminatory access to UNE loop hot cuts consistent with its statutory obligations. Accordingly, SWBT's Section 271 Application should be denied.

Very truly yours,

David F. Wertheimer
John A. Redmon

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ATTACHMENT A

THIS ATTACHMENT IS BEING FILED

UNDER SEAL PURSUANT TO PROTECTIVE ORDER

ATTACHMENT A

CONFIDENTIAL   NOT FOR PUBLIC INSPECTION

I hereby affirm under penalty of perjury that the factual assertions set forth in the foregoing submission by AT&T are true and correct to the best of my knowledge and belief.

Executed on March 6, 2000

_____
Sarah DeYoung